

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner.

Upon entry of the instant Amendment, Claims 1-6 and 9-36 will be all of the claims presently pending before the Examiner. Instantly, Claims 1-6 and 9-36 are amended. Claims 7 and 8 are canceled without prejudice. In addition, the Specification has been amended to address various informalities.

Applicants respectfully submit that no new matter has been added by the present amendments. Support for the amendments can be found generally throughout the Applicants' disclosure. It should also be noted that this Amendment is not in acquiescence of the Office's position on the allowability of the claims but made merely to expedite prosecution.

The Office is, therefore, respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

I. Claim Objections

Claims 4, 7-35, and 37-39 presently stand objected to as being improper multiple dependent claims. These claims have been amended to recite properly claimed dependencies; therefore, the objections can be withdrawn.

II. Claim Rejections

A. Provisional Non-Statutory Double Patenting

Claims 1 and 5 are provisionally rejected based on non-statutory obviousness type double patenting. Said rejections are acknowledged. Applicants reserve their right to fully address these rejections in the event they become non-provisional.

B. 35 U.S.C. 112 and 35 U.S.C. 101

Claim 36 is rejected as being indefinite and as being directed to non-statutory subject matter. Applicants respectfully submit Claim 36 has been amended to positively set forth a step to a process and, as such, is now directed to a statutory class of patentable subject matter and is definite. The rejection should now be withdrawn.

C. 35 U.S.C. 102(b)

Claims 1-3, 5-6, and 36 are rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Lavoie et al., USPN 5,331,025 (hereinafter "Lavoie"). Applicants traverse said rejections for the following reasons and request their withdrawal.

As best understood, Lavoie "[r]elates to a non-aqueous coating composition and a method for reducing the drying time of a non-aqueous coating composition by incorporating composite polymer particles having a softer, insoluble first stage and a hard second stage without adversely affecting the viscosity and pot life of the liquid coating composition and without degrading the properties of the final dry coating, including color, flexibility, impact resistance, gasoline resistance, salt spray resistance and humidity resistance." (Abstract)

The Office opines that the composite polymer particles of Lavoie teach the presently claimed microgels (B). As indicated by the Examiner, "Lavoie et al. disclose the particle size of the composite particles is typically in the range from about 100 nanometers to about 550 nanometers (nm), preferably from about 250 nm to about 500 nm...." *Office Action Pg. 4*

Presently there is claimed in amended independent claim 1, "[a]t least one microgel (B) comprising primary particles, wherein the primary particles of the microgel (B) have an average particle diameter of less than 99 nm."

As the Examiner is assuredly aware, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction." *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983). Since Lavoie fails to teach a particle size under 100 nm it cannot anticipate the presently claimed invention. Therefore, the present rejections should be withdrawn.

Furthermore, Applicants would like to briefly note that Lavoie not only fails to teach the claimed invention, it also fails to suggest the same as well. As provided by Lavoie, the lower limit of 100 nanometers for the size of the composite polymer particles is crucial for the invention's dispersability, because composite polymer particles with a lower particle size are taught to be very difficult to disperse in the respective medium to which they may be applied, thereby producing undesirable results leading one skilled in the art to expect their use to be unsuccessful.

In light of the present shortcomings of the art, it is respectfully requested that the present anticipation rejections be withdrawn.

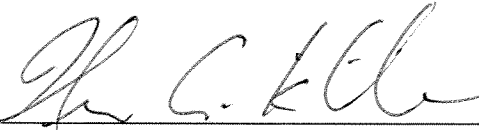
II. Conclusion

In view of the foregoing, it is respectfully submitted that independent claim 1 is fully distinguishable over the applied art and is thus in condition for allowance. By virtue of dependence from what is believed to be an allowable independent claim 1, it is respectfully submitted the remaining dependent claims are also presently allowable. Notice to the effect is earnestly solicited.

If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

The USPTO is hereby authorized to charge any fees, including any fees for an extension of time or those under 37 CFR 1.16 or 1.17, which may be required by this paper, and/or to credit any overpayments to Deposit Account No. 50-2527.

Respectfully,

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